



COEUR D'ALENE TRIBE

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REFERENCE:

The Honorable Mike Crapo
United States Senate
Washington D.C. 205 10

September 2, 2005

Dear Senator Crapo:

The Coeur d'Alene Tribe believes that S.535, the *Native American Connectivity Act*, is a positive step forward in addressing the telecommunications and information technology deficiencies of Indian Country. The Tribe supports the overall purposes of this Act. The Tribe is supportive of the concept of block grants to eligible tribes and tribal organizations without having to compete against State and municipal entities. The Tribe believes it is critical that tribes control how the funds are utilized for the development of information technology within their respective communities.

Recently, the Coeur d'Alene Tribe opened a community technology center to provide wireless broadband access and computers available to Tribal members and the community at large. This technology will provide endless opportunities for the Tribe and its members to compete in this new and progressive global economy. It will also provide unprecedented potential for language revival, and will greatly enhance the Tribe's efforts to preserve its history and culture. The block grants made available through the *Native American Connectivity Act* will help the Tribe further develop this technology and bring additional communications services and infrastructure to the Reservation community.

While the Tribe supports the overall goals of this Act, the environmental protection provisions, found in Section 7 of the Act, raise some concerns with respect to compliance with the National Environmental Policy Act of 1969 (NEPA). The Act specifies, at Section 7(b)(4)(D), that a tribal officer will assume the status of a "responsible Federal official" under NEPA and consent, on behalf of the grant recipient and tribal officer, to jurisdiction of the Federal courts. The Tribe is concerned that NEPA compliance may add unnecessary delay to the federal approval of Tribal projects and consent to jurisdiction in Federal court may provide citizen groups with another avenue for blocking the decisions of federal agencies as to Tribal lands.

NEPA was enacted to encourage a national policy of protecting, promoting, and restoring the quality of the human environment. While the Tribe is supportive of this policy and has advocated these goals for its own Reservation, NEPA compliance can be a complicated and lengthy process. NEPA compliance is required whenever a "federal action" occurs on public land. Almost any activity that is carried out as a result of these

block grants could be construed as a "federal action" triggering some level of NEPA analysis. The trust relationship between the United States and Indian tribes creates some unique difficulties with NEPA compliance in Indian Country. Congress and the courts have long recognized the inherent sovereignty of Indian tribes and the power of tribes to regulate their lands, Indian lands are not public lands, rather they are lands intended for the exclusive use and benefit of the tribe and its members. NEPA review will add delay and expense to the federal approval of land transactions that will likely be necessary to develop telecommunications systems on the Coeur d'Alene Reservation.

NEPA could also be used as a tool of public citizen groups to block the decisions of federal agencies with respect to the Tribe's lands. While NEPA does not include a statutory provision authorizing private parties to file lawsuits in federal court, the Administrative Procedures Act (APA) does provide the avenue for review of a final agency decision made pursuant to NEPA. The APA and the consent to federal court jurisdiction provided in this Act, could provide standing for groups wishing to challenge the Tribe's development of telecommunications infrastructure, thus thwarting the goals of the Act.

In order to assist the Coeur d'Alene Tribe and other tribes to gain access to telecommunications and information technology infrastructure and services, the Tribe believes that Congress should take this opportunity to evaluate alternatives to NEPA on tribal lands, that allow for some public involvement, yet preserve the primacy of tribal decision-making.

The Tribe is also concerned with the language of Section 8 of the Act, which allows the Attorney General to bring a civil action against the grant recipient for failure to comply substantially with any provision of this Act. This could be construed as a waiver of tribal sovereign immunity and the Tribe believes less drastic measures could be taken to assure compliance with the Act.

The Coeur d'Alene Tribe is happy to provide further information or answer questions regarding **S.535**. Please contact Quannah Spencer, Legislative Director, at (208) 686-0803, or by email at qspencer@cdatribe-nsn.gov

Sincerely,


Chief J. Ailah, Chairman
Coeur d'Alene Tribe

Cja:dfw